

### **REMARKS**

Applicants respectfully requests entry of the amendments and remarks submitted herein. Claims 2-4, 6-7, 11-12, 14-16, 18, 20, 28, and 31-32 are amended; claims 1, 5, 8-10, 13, 21, 26-27, and 29-30 are canceled, and claims 33-52 are added. Therefore, claims 2-4, 6-7, 11-12, 14-20, 22-25, 28, and 31-52 are currently pending.

Support for the phrase "transfection mixture" in claims 32-42 can be found throughout the specification, such as at page 26, lines 11-22.

Support for new claims 40-41 and 51-52 reciting a double-stranded oligonucleotide of at least 100 bp or 75 bp can be found throughout the specification, such as at page 26, lines 8-10.

Support for new claim 43 can be found throughout the specification, such as claim original claim 32. Support for new claims 44-50 can be found throughout the specification, such as claims 2-4, 6, 7, 11-12 and 19.

#### **Rejection under 35 U.S.C. § 112, Second Paragraph**

The examiner rejected claim 32 under 35 U.S.C. § 112, second paragraph concerning the term "weak promoter." The examiner indicated that the metes and bounds of the weakness of the promoter required is not clear so that the skilled artisan would now whether a particular promoter would meet the limitation of the claim.

Claim 32 has been amended to remove this term. Insofar as the examiner applies this rejection to new claim 43, Applicant traverses this rejection. The specification at page 17, lines 8-15 defines a weak promoter as "a promoter that controls expression of the toxin in such a manner as to prevent the toxin from killing cells before the gene targeting construct has had a chance to incorporate into the chromosome of the host somatic cell via homologous recombination. Examples of weak promoters are known to the art, and include, for example, a modified Rous sarcoma virus (RSV) promoter and the SV40 promoter." Thus, the metes and bounds of this term would be clear to a skilled artisan. Applicant requests that this rejection be withdrawn.

The examiner rejected claims 10 and 32 under 35 U.S.C. § 112, second paragraph concerning the terms "modified rouse sarcoma virus (RSV) promoter." Claim 10 has been

cancelled, and claim 32 has been amended to delete this term, thereby rendering this rejection moot. Applicant requests that this rejection be withdrawn.

Rejection under 35 U.S.C. § 103(a)

The examiner has rejected claims 1-4, 6-7, 12-17, 20-25, and 28-31 under 35 U.S.C. § 103(a) as being unpatentable over Capecchi et al. (U.S. Patent No. 5,631,153) in view of Sedivy et al. (Trends in Gen. 15:88-90 (1999)). The examiner has also rejected claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Capecchi et al. (U.S. Patent No. 5,631,153) in view of Sedivy et al. (Trends in Gen. 15:88-90 (1999)), and further in view of Pfarr et al. (DNA 5:115-122 (1986)).

Claims 2-4, 6-7, 11-12, 14-17, 20, 22-25, 28, and 31 have been amended to depend either directly or indirectly from claims 18 or 19. None of the cited references teach or suggest introducing a double-stranded oligonucleotide into the somatic cell. Thus, these claims are patentable over the cited art. Therefore, Applicant requests that these rejections be withdrawn.

Allowable Subject Matter

The examiner has indicated that claims 18, 19, 26 and 27 would be allowable if re-written in an independent form. Claims 18 and 19 have been amended as suggested by the Examiner. Claims 2-4, 6-7, 11-12, 14-17, 20, 22-25, 28, 31, and 51-52 depend either directly or indirectly from these allowable claims.

New claims 33-52 recite the features of claims 2-4, 6, 7, 11-12 and 19. Therefore, Applicant asserts that these claims are also allowable.

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**CONCLUSION**

The Examiner is invited to contact Applicant's Representative at the below-listed telephone number if there are any questions regarding this Response or if prosecution of this application may be assisted thereby. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3503. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account 50-3503.

Respectfully submitted,

Gail Bishop et al.

By their Representatives,

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